COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 219 of 2002

The New India Assurance
Company Ltd. … **Appellant.**

Versus

Smt. Revti Devi alias Shanti Devi
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 14-08-2002, passed in M.A.C. Petition No. 27 of 1999, Smt. Rewati Devi alias Shanti Devi Vs. The New India Assurance Co. Ltd. and another, by the Motor Accident Claims Tribunal/ District Judge, Almora ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 4,67,500/- in favour of the claimant-respondent nos. 1 to 4 as against the Opposite Party No.1 –appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of quantum of compensation and that the driver of the vehicle was not holding a valid driving licence.

It has been contended on behalf of the appellant that the driver of the vehicle was not holding a valid driving licence and no finding to this effect has been recorded by the learned Tribunal, though plea has been raised in the written statement filed by the appellant-O.P. No.1 before the learned Tribunal. It has further been submitted that the quantum of award determined by the learned

Tribunal is not based on record, therefore, the impugned judgment and award are not sustainable in the eye of law.

At the outset, if may be mentioned that in view of the contentions raised in the appeal, we are of the opinion that it is not necessary to go into details of the case. A motor accident took place on 12.10.1999 involving K.M.O.U. Bus No. U.P. 22/7387 near Hawalbagh in district Almora, due to rash and negligent driving by its driver, with the result Dan Singh (deceased) sustained grievous injuries and succumbed to his injuries on the spot. Deceased was a Class IV employee in the Railway Department and was getting Rs. 4500/- per month. He was aged 43 years at the time of accident. Accordingly, his legal heirs and dependents have filed the claim petition. Both the Opposite Parties, insurer and owner of the vehicle, contested the claim petition and filed their separate written statements. On the pleadings of the parties, the learned Tribunal framed two Issues in the case. Issue No. 1 related to rash and negligent driving by the driver of the vehicle in question resulting into grievous injuries and consequent death of the deceased in the motor accident. Issue No. 2 related to the relief.

Learned Tribunal after hearing both the parties and considering the evidence on record found that the deceased Dan Singh has died due to the injuries sustained by him in the motor accident, which was caused as a result of rash and negligent driving on the part of driver of K.M.O.U. Bus No. UP 022/7387. The learned Tribunal also found that the deceased was aged 43 years and he was getting salary worth Rs. 5596/-. The learned Tribunal was of the view that had the deceased been alive, he would have earned total salary of Rs. 11,40,000/- upto the age of his retirement from Railways. After working out the loss of dependency, the learned Tribunal came to the conclusion that total loss of income due to death of deceased can be determined at Rs. 10,00,000/- and after deducting 1/3rd from the same towards personal expenses of

the deceased. Ultimately, the learned Tribunal has decreed the claim petition for total compensation of Rs. 4,67,000/- in favour of the claimant-respondent nos. 1 to 4 as against the Insurance Company, which gave rise to the present appeal.

We have heard learned counsel for the appellant, Mr. Tanveer Alam Khan as well as learned counsel for the claimant respondent nos. 1 to 4, Mr. Manoj Tewari and have carefully gone through the entire material before us including the impugned judgment and award.

It has been submitted on behalf of the appellant that plea of validity of driving licence of the driver of the vehicle in question was raised by the Insurance Company in its written statement but the learned Tribunal has not recorded any finding on this point while fastening liability on the Insurance, therefore, the impugned judgment and award suffers from illegality. We have considered the submissions of the appellant. It is true that in its written statement, such a plea was raised by the Insurance Company. Having considered this aspect of the case, we find that there is nothing on record to show that this plea was ever pressed by the appellant at the time of framing of issues before the delivery of impugned judgment by the learned Tribunal. Moreover, the appellant-Insurance Company has failed to led any evidence before the Tribunal on this score. The Insurance Company-appellant could not point out any instance that it had taken steps to get an Issue framed on the point of validity of driving licence and the prayer therefore has been turned down by the Tribunal. Moreover, it is for the party concerned to lead evidence in case it has taken any defence. It appears that the appellant has presumably waived this plea and did not press this ground before the Tribunal even at the time of framing of Issues. It is evident that the case remained pending for a considerable period after the framing of issues by the Tribunal. For these reasons, in the circumstances of the case, this argument has no force. The Apex Court in the case of ***"National***

Insurance Company Limited Vs. Swaran Singh and others" (2004 (3), S.C.C., page 297), while referring Nicolletta Rohtagi case has held in para 98 that ***"There cannot be any doubt or dispute that defences enumerated in Section 149(2) would be available to the insurance companies, but that does not and cannot mean that despite such defences having not been established, they would not be liable to fulfil their statutory obligation under sub-section (1) of Section 149 of the Act."*** We are, therefore, not inclined to accept this contention and the same is not tenable.

So far as the argument advanced on behalf of the appellant challenging the quantum of compensation is concerned such a ground is not at all open to the Insurance Company in the appeal. It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company without prior permission under Section 170 of the Motor Vehicles Act. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer- appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Vs. Nicolletta Rohtagi and others"[(2002) 7 S.C.C. 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".*** Thus, in view of the law laid down by the Apex Court reported in ***(2002) 7 S.C.C. 456 (supra),*** which is fully applicable

in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

Accordingly, the appeal has no merit and deserves to be dismissed. The judgment and award, under appeal, is liable to be upheld.

The appeal is dismissed. Impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP